CCRB INVESTIGATIVE RECOMMENDATION

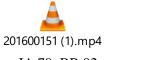
Investigator:		Team:	CCRB Case #:	\square	Force	$\overline{\checkmark}$	Discourt.	U.S.
Rebecca Ho		Squad #3	201600151	Ø	Abuse		O.L.	Injury
Incident Date(s)		Location of Incident:		F	Precinct:	18	Mo. SOL	EO SOL
Monday, 01/04/2016 10:10 PM		§ 87(2)(b)			23	7	7/4/2017	7/4/2017
Date/Time CV Reported		CV Reported At:	How CV Reported	 :	Date/Time	Rec	eived at CC	RB
Tue, 01/05/2016 10:55 PM		Mayor's Office	E-mail		Wed, 01/0	6/201	16 12:21 PM	Л
Complainant/Victim	Туре	Home Addre	ess					
	-31							
Subject Officer(s)	Shield	TaxID	Command					
1. POM Sajit Tomy	7575	955585	HBM IRT					
2. POM Gabor Kolman	15117	956025	HBM IRT					
Witness Officer(s)	Shield N	o Tax No	Cmd Name					
1. POM Frank Gashi	6497	955942	HBM IRT					
2. POM Sam Houari	6540	955987	HBM IRT					
Officer(s)	Allegatio	on			Inve	estiga	ator Recor	nmendation
A.POM Sajit Tomy	Abuse: P	O Sajit Tomy stopped §	87(2)(b)					
B.POM Gabor Kolman	Abuse: P	O Gabor Kolman stopp	ed § 87(2)(b)					
C.POM Gabor Kolman	Abuse: P	O Gabor Kolman friske	ed § 87(2)(b)					
D.POM Gabor Kolman	Abuse: P	O Gabor Kolman search	hed ^{§ 87(2)(b)}					
E.POM Sajit Tomy	Force: Po	O Sajit Tomy used phys	ical force against \$87	(2)				
F.POM Gabor Kolman	Force: Po	O Gabor Kolman used p	ohysical force agains	t § 87	(2)			
G.POM Sajit Tomy	Discourte § 87(2)(b)	esy: PO Sajit Tomy spo	ke discourteously to					
H.POM Sajit Tomy		O Sajit Tomy used pepp	per spray against § 87(2	2)				
I.POM Sajit Tomy	Force: Po	O Sajit Tomy used pepp	er spray against § 87(2	2)(b)				
J.POM Sajit Tomy	Force: Pointividua	O Sajit Tomy used pepp ıl.	per spray against an					
K.POM Sajit Tomy	Force: Po	O Sajit Tomy pointed hi	is gun at ^{§ 87(2)(b)}					
L.POM Sajit Tomy	Force: Po	O Sajit Tomy struck § 87((2)(b) with	h a g	gun.			
M.POM Gabor Kolman	Force: P(§ 87(2)(b)	O Gabor Kolman used p	physical force agains	t				
N.POM Sajit Tomy		O Sajit Tomy used phys	ical force against § 87	(2)(b)				

Officer(s)	Allegation	Investigator Recommendation
O.POM Sajit Tomy	Force: PO Sajit Tomy struck §87(2)(b) with	a gun.

Case Summary

On January 5, 2016, §87(2)(b) filed this complaint on behalf of §87(2)(b) via the Office of the Mayor, which generated casework no. 844710. It was referred to the CCRB on January 6, 2016 [BR 14].
On January 4, 2016, Sgt. Edward DeGiacomo of the Housing Bureau of Manhattan Impact Response Team (HBM IRT) filed this complaint on behalf of via IAB, which generated log no. 16-0766. It was referred to the CCRB on January 12, 2016 [NYPD 14].
On January 4, 2016, at 10:10 p.m., \$\frac{87(2)(b)}{87(2
Then, § $87(2)(b)$ walked up to the $\frac{\$}{87(2)}$ \$ $87(2)(b)$, § $87(2)(g)$
PO Kolman holding \$\frac{87(2)(b)}{587(2)(b)}\$ s arms while PO Tomy had his left shoulder against \$\frac{87(2)(b)}{587(2)(b)}\$ s chest and a can of mace in his right hand. \$\frac{87(2)(b)}{587(2)(b)}\$ and the other individual, PO Tomy sprayed them with mace (Allegations I and J). PO Tomy then put his mace can away and pointed his gun at \$\frac{87(2)(b)}{587(2)(b)}\$ (Allegation K). PO Tomy struck \$\frac{87(2)(b)}{587(2)(b)}\$ on the head once with his gun (Allegation L). A physical struggle between \$\frac{87(2)(b)}{587(2)(b)}\$ and \$\frac{87(2)(b)}{587(2)(b)}\$ with PO Tomy and PO Kolman ensued (Allegations E and F continued, Allegation M and N). \$\frac{87(2)(b)}{587(2)(b)}\$ was struck on the head multiple times with PO Tomy's gun (Allegation O). \$\frac{87(2)(b)}{587(2)(b)}\$ was arrested for assault and resisting arrest [NYPD 20]. \$\frac{87(2)(b)}{587(2)(b)}\$ was arrested for \$\frac{87(2)(b)}{587(2)(b)}\$ were subsequently transported to \$\frac{87(2)(b)}{587(2)(b)}\$.
sustained four lacerations to his scalp, which were closed with twelve staples [Privileged]. SST(2)(b) sustained one laceration to his scalp requiring two staples to close, and was also diagnosed with soft tissue injury (concussion), and swelling to his hands [Privileged].
There are only two exterior cameras at the incident and only shows \$87(2)(b) and \$87(2)(b) being removed from the building. Sgt. Christopher Morano of IAB Group 54, the assigned investigator to the concurrent IAB investigation, has not yet scheduled or interviewed any officers in regards to this case.

Video Evidence





IA 79, BR 02

	Mediation, Civil and Criminal Conviction Histories	
As § 87(2)(b) was not suitable 1	and §87(2)(b) were arrested and sustained injuries, this for mediation.	is case
New York as of A	and § 87(2)(b) have not filed a Notice of Claim with the CApril 11, 2016 with regard to the incident.	City of
87(2)(b)] [§§ 86(1)(3)&(4)]	§ 87(2)(c)]	
	Civilian and Officer CCRB Histories	
his is the first (CCRB complaint filed by §87(2)(b) and §	87(2)(b)
[BR]		
	has never filed a complaint with the CCRB [BR 13]. has been a member of the service for 2 years and this is the first (CCRR
mplaint agains		CCKD
1 0	an has been a member of the service for 2 years and this is the first	CCRB
	Potential Issues	
	exhausted contact attempts to \$87(2)(b) On February 5, 20	
lersigned call	and she provided a telephone statement [BR 05].	§ 97/2\
	ne would check her work schedule for her availability to be interviewed	
obrugry 8th 10	ned back the same day. The undersigned called \$87(2)(b) again, 12 th , 16 th , and 19 th of 2016, and with each call, left a voice may	ain on
	back. On February 10, 2016, the undersigned called \$87(2)(b)	
	Please call letters were mailed to \$87(2)(b) on Fe	
0^{th} , 16^{th} , and 2	2 nd of 2016. To date, no letters have been returned by the USPS	S. On
ebruary 22, 20	016, the undersigned called §87(2)(b) and scheduled an interest of the scheduled and interest of	erview
pointment for	the same day. §87(2)(b) called to reschedule the appointm	ent to
	6. On February 25, 2016, §87(2)(b) missed her scheduled appoin	
	to cancel or reschedule. On March 9, 2016, \$87(2)(b) called	
	scheduled an interview appointment for the following day. On Mar	
.U16. § 87(2)(b)	missed her scheduled appointment without calling to can	cel or

reschedule. As a result, the investigation does not have a verified statement from her.

• As \$87(2)(b) and \$97(2)(b) denied the presence of a fourth civilian in their statements to the CCRB and the officers could not identify the civilian they alleged was present, the investigation was unable to contact the unidentified individual.

Finding and Recommendations

Allegations Not Pleaded

• **Discourtesy**: alleged PO Tomy spoke discourteously towards [BR 04]. As \$87(2)(b) did not allege this [BR 01], \$87(2)(9)

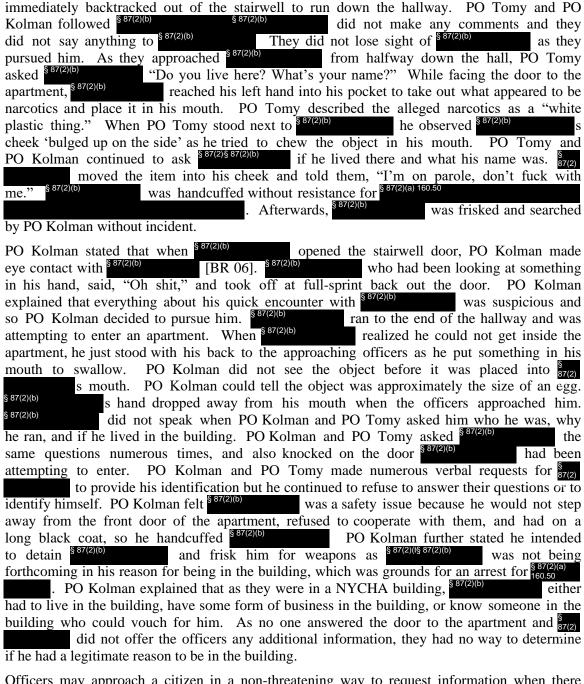
Recommendations

- Allegation A Abuse of Authority: PO Sajit Tomy stopped \$87(2)(b)
 Allegation B Abuse of Authority: PO Gabor Kolman stopped \$87(2)(b)
- Allegation C Abuse of Authority: PO Gabor Kolman frisked § 87(2)(b)
- Allegation D Abuse of Authority: PO Gabor Kolman searched \$87(2)(6)

In his statement to the CCRB, \$87(2)(b) stated he had just thrown out the trash and stepped into the stairwell to smoke a cigarette when he observed PO Tomy and PO Kolman on the § 87(2)(b) explained that he did not want to smoke his cigarette next to the officers so he exited the stairwell and closed the door behind him. §87(2)(6) PO Tomy and PO Kolman run up the stairs and then they approached him in the elevator bank to ask him why he ran away. §87(2)(b) informed the officers he did not run, and that he lived in the building. § 87(2)(b) told PO Tomy and PO Kolman that because he saw them in the stairwell, he went to go walk around to go to the other stairwell. PO Tomy and PO Kolman asked what he was doing in the stairwell and \$87(2)(6) told them he was there to smoke because he was not allowed to in the house. At the time, \$87(2)(6) had his cigarette in hand. When the officers asked \$87(2)(b) where he lived, \$87(2)(b) began to walk and talk with the officers to his apartment door. PO Kolman asked \$87(2)(b) if he had anything on him and when he told them he did not have anything, he was asked for his identification. § 97(2)(b) alleged PO Kolman frisked his outer garments. Then, PO Tomy asked him where he kept his wallet and PO Kolman reached into his back pocket to remove his wallet and his identification card from his wallet. PO Kolman noted \$87(2)(5) identification was a prison card and handcuffed him. PO Tomy observed \$87(2)(b) chewing something white in his mouth; [8] denied having any narcotics and explained that he had been chewing a white piece of gum at the time.

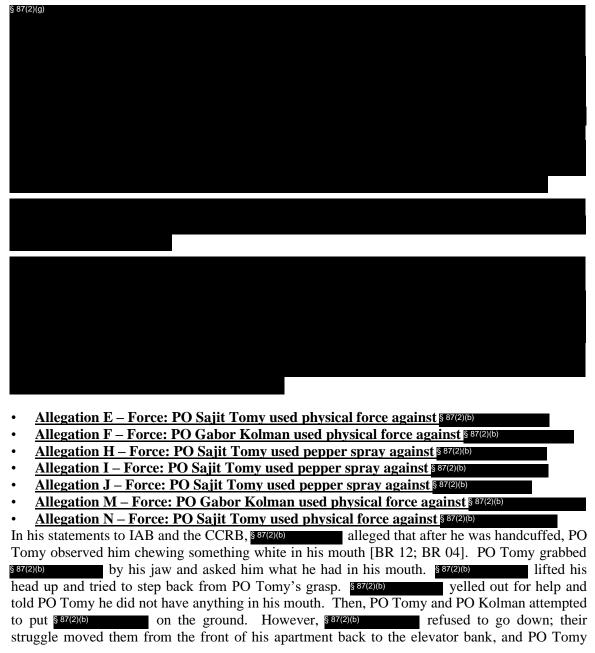
PO Tomy stated that while conducting vertical patrols in series, a drug-prone location, he and PO Kolman were descending from the strictly opened the door leading to the strictly stairwell and made eye contact with PO Tomy [BR 07].

Page 4
CCRB Case # 201600151

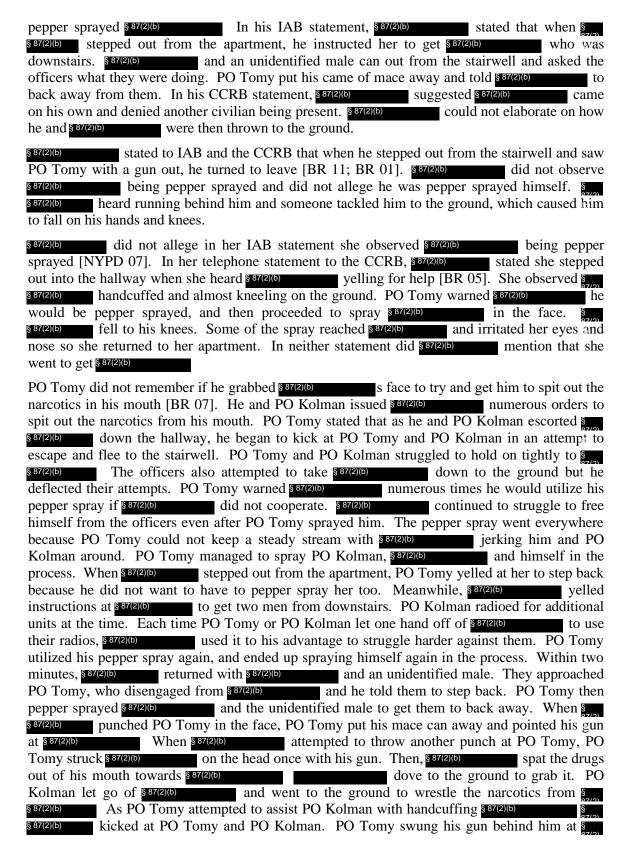


Officers may approach a citizen in a non-threatening way to request information when there is some objective credible reason for that interference not necessarily indicative of criminality (aka, a "level one" interaction) People v. Debour, 40 NY2d 210 (1976) [BR 25]. Officers are allowed to approach an individual and inquire about basic, nonthreatening matters such as name, address, and destination if they have an articulable reason to do so; the reason need not be indicative of criminality. Individuals may not be selected for questioning based on their mere presence in a public housing building; there must be evidence of prior criminality in the building. People v. Ortiz, 2011 NY Slip Op 51036U (Crim. Ct. Kings Cty., 2011) [BR 24]. The courts further established in Debour that questioning becomes more 'pointed' under a common-law inquiry (aka, a "level two" interaction), which must be supported by a founded suspicion that criminality is afoot. Officers can use reasonable force to stop and detain an individual.

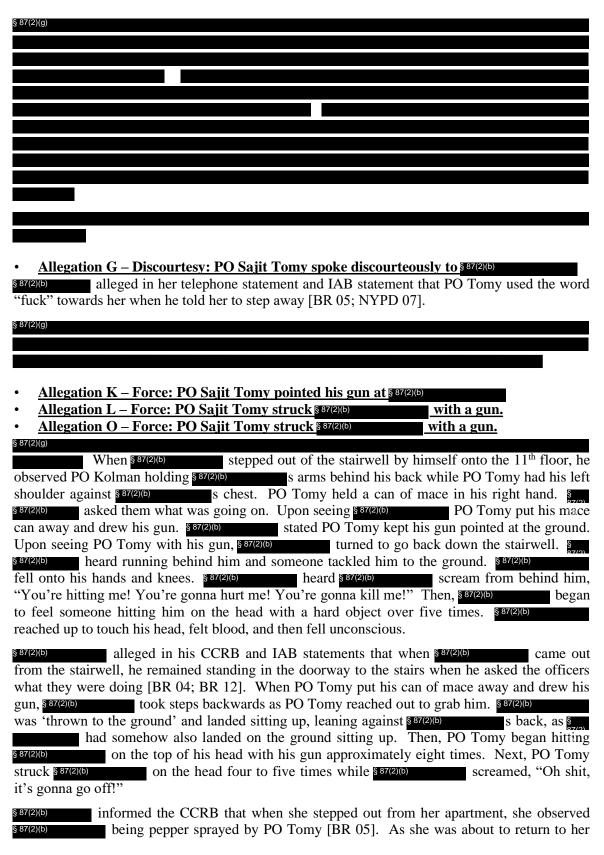
whenever they have a reasonable suspicion that the individual has committed, is committing, or is about to commit a crime (aka, a "level three" interaction). When there is nothing to establish that a crime has been or is being committed, flight, like refusal to answer, is an insufficient basis for seizure or for the limited detention that is involved in pursuit. People v. Madera, 189 A.D.2d (1993) [BR 28]. Pursuit of a fleeing individual constitutes a stop People v. Nunez, NY Slip Op 7753 (2013) [BR 30]. Upon determining that an individual is not a resident, an officer is justified in arresting the person if they do not indicate who they are visiting in the building. Ortiz [BR 24]. NY Penal Law §140.05 states a person is guilty of trespass when he knowingly enters or remains unlawfully in or upon premises [BR 29]. With probable cause to believe that an offense was committed and that the subject arrested committed it, an officer may engage in a search of the subject incident to arrest. Debour.



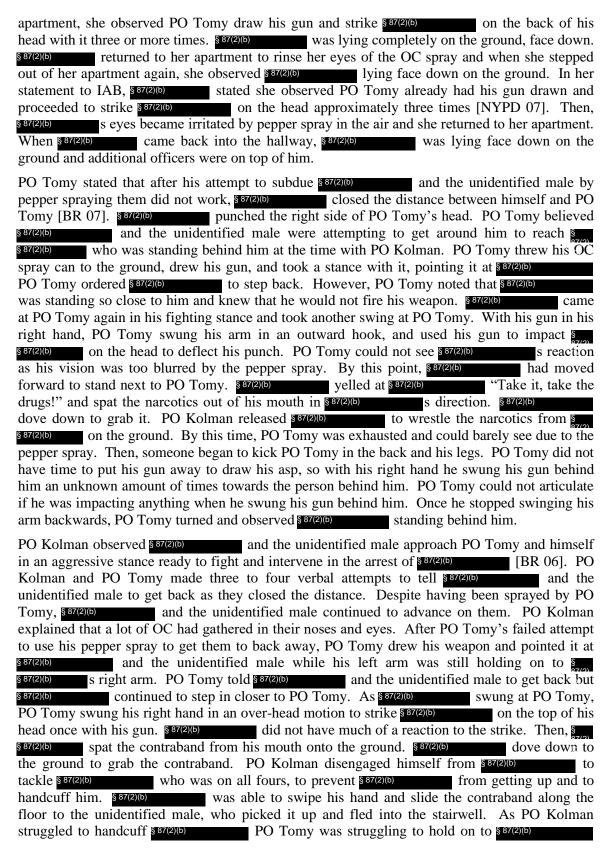
Page 6
CCRB Case # 201600151

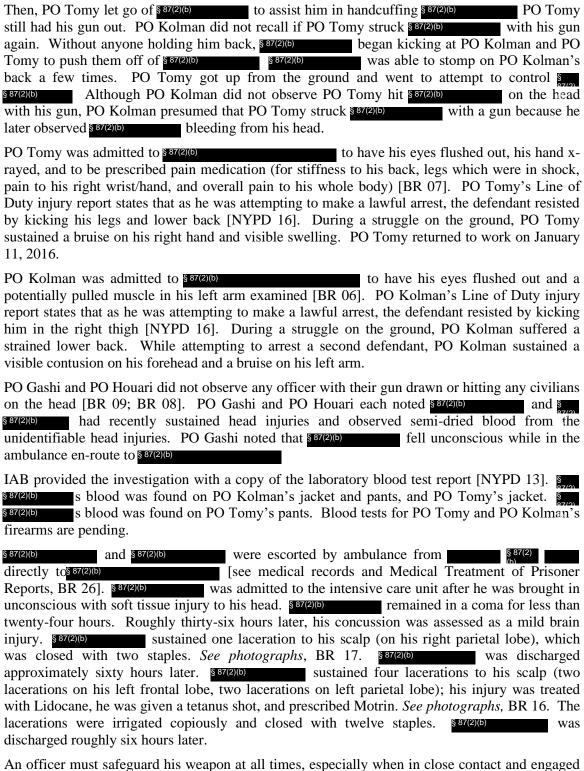


an unknown number of times, and struck $\$87(2)(6)$ on the head. Allegations E, L, and O (gun pointed and struck with gun) are discussed and analyzed below.
began to thrash around, twisting his body as he flailed and kicked his legs in an attempt to get away from the officers [BR 06]. ST(200) attempted and succeeded at leading the officers back down the hallway to the elevator bank where the stairwell and incinerator was. PO Kolman and PO Tomy made numerous attempts to take ST(200) down to the ground but were unable to do so. Continued to the stairwell down to the ground but were unable to do so. Continued to thrash his body around. Then, PO Tomy took out his pepper spray and, without issuing any verbal warnings, sprayed Continued to thrash his body around. Then, PO Tomy took out his pepper spray and, without issuing any verbal warnings, sprayed Continued to resist so PO Kolman in the face; some back-fired onto PO Tomy's face as well. ST(200) and an unidentified male, the two men approached Continued to resist so PO Kolman requested for additional units to respond to their location. When Continued to resist so PO Kolman and an unidentified male, the two men approached Continued to resist so PO Kolman and PO Tomy told them three or four times to get back. PO Tomy sprayed Continued to advance closer so PO Tomy pointed his gun at them. As Continued to advance closer so PO Tomy pointed his gun at them. As Continued to advance closer so PO Tomy swung his right hand in an over-head motion and struck Contraband from his mouth and Contraband with his gun. Then, Contraband to grab it. PO Kolman down to tackle Contraband from his mouth and Contraband was down on his hands and knees. PO Kolman wanted to prevent Contraband from his mouth and Contraband from his mou
When PO Frank Gashi responded to the call for assistance with his partner PO Sam Houari, they first observed PO Tomy attempting to handcuff \$\frac{87(2)(0)}{37(2)(0)}\$; \$\frac{87(2)(0)}{37(2)(0)}\$ was lying on his side, flailing his arms and twisting his body around in resistance [BR 09; BR 08]. PO Gashi stepped in to assist PO Tomy while PO Houari stood with PO Kolman and \$\frac{87(2)(0)}{37(2)(0)}\$ s left arm back for him to cuff. NYPD Patrol Guide \$\frac{2}{2}03-11\$ discusses the justification for the use of physical force by officers [BR 20]. It explains that an officer is able to use the minimum and necessary physical force to overcome resistance in the course of effecting an arrest, preventing an escape, and in self-defense from what "he or she reasonably believes to be the use or imminent use of physical force." An officer may use their pepper spray as a means of physical force pursuant to the minimum and
necessary standard for use of force. NYPD Patrol Guide §212-95 [BR 22].



Page 9 CCRB Case # 201600151





An officer must safeguard his weapon at all times, especially when in close contact and engaged in a struggle with a civilian. Drawing a firearm in such a situation is negligent. Police Department v. Strom, OATH Index No. 546/00 (2000) [BR 21]. A baton or nightstick blow to the head constitutes deadly force. Police Department v. Bolusi, OATH Index No. 583/92 (1992)

[BR 27]. NYPD Patrol Guide §203-12 prohibits officers from using deadly force unless they have probable cause to believe that they must protect themselves or another person present from imminent death or serious physical injury [BR 26]. Striking an individual on the head with a flashlight in self-defense was found to be reasonable and not excessive because there was no intent to use it as a club and it was limited in nature. The use of a nightstick, radio, or flashlight to inflict a limited amount of force may be appropriate to effectuate an arrest or in self-defense. Police Department v. Stiso, OATH Index No. 1886/99 (1999) [BR 23].

Investigator:	Rebecca Ho Page 12 CCRB Case # 201600151	04/14/2016	
Squad: <u>3</u>			
§ 87(2)(g)			
§ 87(2)(g)			

CCRB - Confidential

	Signature	Print	Date
Supervisor:	Title/Signature	Dane Buchanan Print	Date
Reviewer:	Title/Signature	Print	 Date